

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FELIPPE MARCUS,
Plaintiff,
v.

**DECISION
and
ORDER**

CITY OF BUFFALO,
OFFICER CALVIS McKNIGHT,
OFFICER VINCENT HUMPHREY,
COMMISSIONER BRYON LOCKWOOD,
LIEUTENANT RONNY BLATCHFORD,
THOMAS LYNCH,
TYLER FONVILLE,
AARON WATKINS,
JOSEPH JUSZKIEWICZ,

20-CV-316JLS(F)

Defendants.

APPEARANCES: FELIPPE MARCUS, *Pro Se*
2500 South Abilene Street
P.O. Box 441058
Aurora, Colorado 80044

CAVETTE CHAMBERS
CITY OF BUFFALO CORPORATION COUNSEL
Attorney for Defendants
DAVID M. LEE, Assistant Corporation Counsel,
of Counsel
1000 City Hall
65 Niagara Street
Buffalo, New York 14202

JURISDICTION

In this action alleging violations of Plaintiff's rights under the Fourteenth Amendment and state law, by papers filed October 11, 2022, Plaintiff moves to compel expert disclosures (Dkt. 102) and to compel fact discovery (Dkt. 103). By papers filed November 1, 2022, Plaintiff further moves to compel fact discovery (Dkt. 108) (together,

“Plaintiff’s motions”). Defendants’ responses were filed November 8, 2022 (Dkts. 112, 113) (“Defendants’ Responses”).

In sum, Plaintiff’s motions seek interrogatory answers, document production including unredacted surveillance video, and responses to Plaintiff’s Requests for Admission. See Dkt. 78, 79. Defendants responses indicate Defendants have no objections, except with respect to Plaintiff’s Interrogatories (see Dkts. 112 ¶ 14, Dkt. 113 ¶ 14), discussed, *infra*, to Plaintiff’s motions, that Defendants will provide complete responses within 33 days, see Dkt. 112 ¶ 16; Dkt. 113 ¶ 16, and request the deadline for dispositive motions be extended by 90 days to February 28, 2023. See Dkt. 112 ¶ 16; Dkt. 113 ¶ 16. As indicated, Defendants object to Plaintiff’s multiple interrogatories arguing that Rule 33(a)(1)’s limitation of 25 interrogatories per party should be construed to limit interrogatories to the “side” rather than per party. See Dkt. 112 ¶ 14; Dkt. 113 ¶ 14 (citing *Zito v. Leasecomm Corp.*, 233 F.R.D. 395, 399 (S.D.N.Y. 2006)). Although the court in *Zito* acknowledges that such a construction may be appropriate in some instances, such an approach would require a case-by-case determination. *Zito*, 233 F.R.D. at 399 (citing 8B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PROACTICE AND PROCEDURE § 2168.1, at 261 (2d. ed. 1994)). Here, the individual police officer Defendants are alleged to have engaged in discrete forms of excessive force by use of, e.g., “an unknown item” (see Dkt. 103 at 2), or a “Taser” (see *id.* at 5), physical contact with Plaintiff, and blows from “something” in the hands (“a silver object”) of another of the Defendant officers. See *id.* at 3. As such, individual interrogatories to each officer Defendant are warranted in this case. Moreover, Defendants’ failure to timely object waives any further grounds for objections to any of

Plaintiff's discovery requests. See *In re DG Acquisition Corp.*, 151 F.3d 75, 84 (2d Cir. 1998) (citing cases).

CONCLUSION

Plaintiff's motions (Dkts. 102, 103 and 108) are GRANTED. Defendants shall respond to Plaintiff's outstanding discovery requests within 33 days. Defendants' request to modify the Scheduling Order has been GRANTED in a Text Order filed November 28, 2022 (Dkt. 114).

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dates: December 1st, 2022
Buffalo, New York

Any appeal of this Decision and Order must be taken by filing written objection with the Clerk of Court **not later than 14 days** after service of this Decision and Order in accordance with Fed.R.Civ.P. 72(a).